

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

FEB 06 2020

JAMES W. MCCORMACK, CLERK

By: [Signature] DEPT. CLERK

TYRONNE G. DAVIS, SR.
11519 TAHOE LANE
LITTLE ROCK, AR 72212
(Name of plaintiff or plaintiffs)

v.

CIVIL ACTION NO. 4:20cv128-JM
(case number to be supplied by the assignment clerk)

Robert Wilkie, Secretary
810 Vermont Ave., N.W.
Washington, DC 20420
(Name of defendant or defendants)

This case assigned to District Judge Mooney
and to Magistrate Judge Kay

COMPLAINT UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

1. This action is brought pursuant to Title VII of the Civil Rights Act of 1964 for employment discrimination. Jurisdiction is specifically conferred on the Court by 42 U.S.C. §2000e-5. Equitable and other relief are also sought under 42 U.S.C. §2000e-5(g).

2. Plaintiff, TYRONNE G. DAVIS, SR., is a
(name of plaintiff)
citizen of the United States and resides at 11519 TAHOE LANE,
(street address)
LITTLE ROCK, PULASKI, AR, 72212,
(city) (county) (state) (ZIP)
501-228-5665.
(telephone)

3. Defendant, Robert Wilkie, Secretary, lives at, or its
(name of defendant)
business is located at 810 Vermont Ave., N.W., Washington,
(street address) (city)
DC, 20420.
(county) (state) (ZIP)

4. Plaintiff sought employment from the defendant or was employed by the

(d) X Insulted AND pressured to leave

9. The circumstances under which the defendant discriminated against plaintiff were

as follows: 1.) INSUFFICIENT work to meet production requirements
2.) Place on Performance Improvement Plan without supporting verifiable documents
3.) Not providing adequate training during performance plan

10. The acts set forth in paragraph 9 of this complaint:

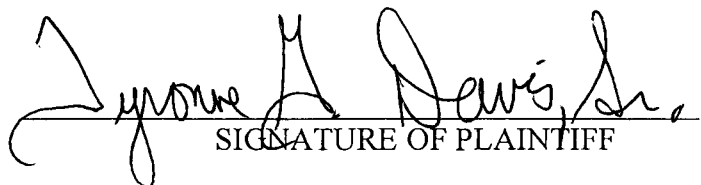
- (a) _____ are still being committed by defendant.
- (b) _____ are no longer being committed by defendant.
- (c) _____ may still be being committed by defendant.

11. Plaintiff attaches to this complaint a copy of the charges filed with the Equal Employment Opportunity Commission which charges are submitted as a brief statement of the facts supporting this complaint.

WHEREFORE, plaintiff prays that the Court grant the following relief to the plaintiff:

- (a) _____ Defendant be directed to employ plaintiff, and
- (b) _____ Defendant be directed to re-employ plaintiff, and
- (c) _____ Defendant be directed to promote plaintiff, and
- (d) X Defendant be directed to 2.5 years of back pay

and that the Court grant such relief as may be appropriate, including injunctive orders, damages, costs and attorney's fees.


SIGNATURE OF PLAINTIFF



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Office of Federal Operations
P.O. Box 77960
Washington, DC 20013

Tyronne Davis, Sr., a/k/a
Mario K.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2019005260

Appeal No. 0120181337

Agency No. 200303502017101068

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120181337 (June 12, 2019). EEOC regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. See 29 C.F.R. § 1614.405(c).

Complainant worked as a Rating Veterans Service Representative, GS-0996-12, at the Agency's Regional Office in Little Rock, Arkansas. Complainant filed an EEO complaint alleging that he was discriminated against and subjected to a hostile work environment on the bases of race (African American), sex (male), and reprisal when: (1) from August 1, 2016 to February 21, 2017, he was not assigned sufficient work to meet his production credits; (2) on September 19, 2016, Complainant was placed on a Performance Improvement Plan (PIP), without supporting documents; (3) from September 19 through December 13, 2016, Complainant was assigned End Products (EP) 600 (reduction EPs) cases during the PIP evaluation period; (4) on October 27, 2016, Complainant was denied a within-grade step increase; (5) on December 13, 2016,

¹ This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

Complainant was assigned Ratings EPs without any previous training; (6) in January 2017, Complainant was assigned to work in the Intake Processing Center; (7) in February 2017, his supervisor refused to consider the 12 hours of official time that Complainant was away from the job because of his EEO case when calculating Complainant's monthly production rate; and (8) on February 15, 2017, Complainant's request for training was denied.

Our prior appellate decision affirmed the Agency's final decision that concluded that Complainant failed to prove that the Agency subjected him to discrimination or a hostile work environment as alleged. The decision also noted that Complainant failed to request a hearing within the timeframes provided in 29 C.F.R. § 1614.108(f).

In his request for reconsideration, Complainant expresses his disagreement with the previous decision and again, requests a hearing. We emphasize that a request for reconsideration is not a second appeal to the Commission. See EEO MD-110, Ch. 9, § VII.A. Rather, a reconsideration request is an opportunity to demonstrate that the appellate decision involved a clearly erroneous interpretation of material fact or law, or will have a substantial impact on the policies, practices, or operations of the Agency. Complainant has not done so here.

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to deny the request. The decision in EEOC Appeal No. 0120181337 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

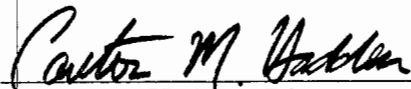
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work.

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.**

The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in black ink, appearing to read "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director
Office of Federal Operations

November 19, 2019

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Tyronne Davis, Sr.
11519 Tahoe Lane
Little Rock, AR 72212

Doris L. Gruntmeir
Chief Counsel, Personnel Law Group
Office of General Counsel
810 Vermont Ave., N.W.
Washington, DC 20420

Harvey Johnson, Deputy Assistant Secretary, Resolution Management
Office of Resolution Management (08D)
Department of Veterans Affairs
810 Vermont Ave., NW
Washington, DC 20420

November 19, 2019

Date



Compliance and Control Division

CERTIFICATE OF MAILING

For timeliness purposes, I will presume, that this Civil Action was received within five (5) calendar days after date of filing with the United States District Court, Eastern District of Arkansas. I certify this civil action was mailed to the following recipients on the date of filing.

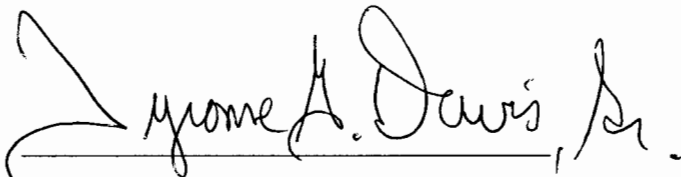
Robert Wilkie, Secretary
Department of Veterans Affairs
810 Vermont Ave., N.W.
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Doris L. Gruntmeir
Chief Counsel, Personnel Law Group
Office of General Counsel
810 Vermont Ave., N.W.
Washington, DC 20420

Harvey Johnson, Deputy Assistant Secretary, Resolution Management
Office of Resolution Management (08D)
Department of Veterans Affairs
810 Vermont Ave., N.W.
Washington, DC 20420

February 6, 2020

Date of Filing



Tyrone G. Davis Sr.